

United States District Court
Western District of Washington
Tacoma Division

John Doe #1, et al.,

Plaintiffs,

v.

Sam Reed, et al.,

Defendants.

No. 3:09-CV-05456-BHS

The Honorable Benjamin H. Settle

Plaintiffs' Pretrial Statement

Pls.' Pretrial Statement
(No. 3:09-CV-05456-BHS)

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Terre Haute, Indiana 47807
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1 Come now Plaintiffs and, pursuant to Local Rule 16(h), serve upon counsel for all other parties
2 this Pretrial Statement.

3 **Federal Jurisdiction**

4 Jurisdiction in this case arises under federal question jurisdiction, under 28 U.S.C. § 1331,
5 because this is an action arising under the First and Fourteenth Amendments to the U.S.
6 Constitution, and under federal statute under 42 U.S.C. § 1983.

7 **Claim for Relief**

8 At trial, Plaintiffs intend to pursue their second claim set forth in their complaint, namely that
9 Washington's Public Records Act is unconstitutional as applied to R-71 petition signers because
10 there is a reasonable probability that, if exposed, R-71 signers will be subjected to threats,
11 harassment, or reprisals.

12 **Admitted Facts**

13 Plaintiffs assert in good faith that there is no dispute as to the following facts:

- 14 1. In November 2009, Referendum 71 ("R-71") appeared on the ballot in Washington. R-71
15 asked Washingtonians to reject or affirm Senate Bill 5688 ("SB 5688"), which granted
16 same-sex partners a host of legal rights and obligations popularly described as "everything
17 but marriage."
- 18 2. Plaintiffs, together with the help of other Washingtonians, worked to get R-71 on the ballot.
19 To do so, Plaintiff Protect Marriage Washington submitted 137,881 signatures to the
20 Secretary of State. After completing its verification process, the Secretary of State officially
21 certified R-71 for the ballot. At the November 2009 election, Washingtonians voted to affirm
22 SB 5688.
- 23 3. Protect Marriage Washington organized in May 2009 for the express purpose of opposing
24 SB 5688, first, by collecting enough signatures to force a referendum, and then, by actively
25 promoting the rejection of SB 5688 at the polls.
- 26 4. Under Washington's Public Records Act, citizen groups have requested the names and
27 addresses of R-71 petition signers. At least two groups have publicly indicated their intent
28 to publish those names on their web sites, in searchable format.

1 5. Before, during, and after the debate over R-71, persons supporting traditional marriage, both
 2 in Washington and throughout the country, were subjected to threats, harassment, and
 3 reprisals.¹

4 6. There have been death threats; physical assaults and threats of violence; vandalism and
 5 threats of destruction of property; arson and threats of arson; angry protests; lewd and
 6 perverse demonstrations; intimidating emails and phone calls; hate mail; mailed envelopes
 7 containing white suspicious powder; multiple web sites dedicated to blacklisting those who
 8 support traditional marriage and similar causes; loss of employment and job opportunities;
 9 intimidation and reprisals on campus and in the classroom; acts of intimidation through
 10 photography; economic reprisals and demands for “hush money”; and gross expressions of
 11 anti-religious bigotry, including vandalism and threats directed at religious institutions and
 12 religious adherents.²

13 7. Protected speech and association has been chilled because of the prospect of reprisals.

14 **Plaintiffs’ Factual Contentions**

15 1. The threats, harassment, and reprisals listed above are attributable to the respective victims’
 16 stance in favor of traditional marriage or similar causes.

17 **Issues of Law**

18 1. Whether, as a threshold matter, the exposure exemption test is available only to “minor
 19 parties.” And if so, what is a “minor party”?

20 2. Whether Plaintiffs are permitted, as a matter of law, to point to evidence of threats,

21
 22 ¹ By this statement, Plaintiffs mean to say only that there is at least *some evidence* of threats, harassment, and
 23 reprisals. Plaintiffs fully recognize that the State and the Intervenor object (1) as to the reason *why* those incidents
 24 arose, (2) as to whether police response was fully capable of dissipating such incidents, and (3) as to the magnitude
 25 of these incidents (i.e., whether the evidence in the case rises to the level of what is needed for an exposure
 26 exemption to issue).

(For example, the State and Intervenor argue that Plaintiffs do not know, and cannot know, *why* an
 unidentified male telephoned the home of a Washington woman and threatened to kill her and her family. Similarly,
 the State and Intervenor contend that the police response to that phone call was adequate to address the incident.
 But the State and Intervenor do not dispute, insofar as Plaintiffs understand their respective positions, that the phone
 call actually took place.)

² In conjunction with this statement, Plaintiffs wish to highlight Local Rule 16.1, under the “Admitted Facts”
 portion of the example provided there. That example clearly states that the parties are to “[e]numerate every agreed
 fact, irrespective of admissibility, but with notation of objections as to admissibility.” Plaintiffs understand that the
 opposing Parties respectively object to much of Plaintiffs’ evidence on admissibility grounds. For purposes of this
 statement, Plaintiffs have disregarded such objections (fully expecting the Parties to note their objections).

1 harassment, and reprisals directed at other groups, within and without the State of
2 Washington, who supported traditional marriage or similar causes.

3 3. Whether the exposure exemption test includes, as a necessary element, law enforcement's
4 unwillingness or inability to respond to threats, harassment, or reprisals.

5 4. Whether the exposure exemption test is indeed flexible, or whether the Plaintiffs must make
6 out their case just as they would any other civil action for damages.

7 **Witnesses**

8 Each of the witnesses listed below, if called to testify, would testify to instances of threats,
9 harassment, or reprisals.

10 1. REDACTED

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14 2. REDACTED

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18 3. REDACTED

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22 4. REDACTED

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24
25
26 5. REDACTED

Redmond, WA 98052

6. REDACTED

REDACTED

Issaquah, WA 98029

7. REDACTED

Edmonds WA 98020

8. REDACTED

Edmonds WA 98020

9. REDACTED

Arlington, Washington 98223

10. REDACTED

Olympia, WA 98503

11. REDACTED

Olympia, WA 98503

12. REDACTED

Vancouver, WA 98662-6718

REDACTED

Richfield, WA 98642

13. REDACTED

Vancouver, WA 98662-6718

REDACTED

Richfield, WA 98642

14. REDACTED

Spokane, WA 99201

REDACTED

Spokane, WA 99224

15. REDACTED

Kelso, Washington 98626

REDACTED

Longview, WA 98632

16. REDACTED REDACTED

REDACTED

Arlington, WA 98223

17. REDACTED

Terre Haute, Indiana 47807

REDACTED

Clearwater, FL 33759

18. REDACTED

Terre Haute, Indiana 47807

REDACTED

Kelso, WA 98626

19. REDACTED

Spokane, WA 99201

REDACTED

Spokane, WA 99207

Exhibits

1. "christian BIGOT" letter addressed to REDACTED
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5 Dated this 9th day of August, 2011.

6 Respectfully submitted,

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Certificate of Service

I, Jared Haynie, am over the age of eighteen years and not a party to the above-captioned action. My business address is 1 South Sixth Street, Terre Haute, Indiana 47807.

On August 9, 2011, I served the foregoing document, described as Plaintiffs' Pretrial Statement, by emailing a copy of the same to counsel's respective emails below:

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I declare under the penalty of perjury under the laws of the State of Indiana that the above is true and correct.

Executed this 9th day of August, 2011.

/s/ Jared Haynie
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